

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

[1] DARRYL C. WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-20-1303-J
	)	
[1] DOLLAR TREE STORES, INC., a	)	Oklahoma County Case No.
foreign for profit business corporation,	)	CJ-2020-5850
[2] DH PACE COMPANY, INC., a foreign	)	
for profit business corporation,	)	
	)	
Defendants.	)	<b>JURY TRIAL DEMANDED</b>

**D.H. PACE COMPANY, INC.’S NOTICE OF REMOVAL**

Defendant D.H. Pace Company, Inc. (“D.H. Pace”), hereby removes this action from the District Court of Cleveland County, Oklahoma, to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §§ 1332, 1441, 1446. The grounds for removal are as follows:

1. On December 8, 2020, Plaintiff Darryl C. Williams commenced this action by filing a Petition in the District Court of Oklahoma County, Oklahoma.
2. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.2, a copy of the Oklahoma County District Court docket sheet is attached as Exhibit 1 and copies of the process, Petition, and other pleadings are attached hereto as Exhibits 2-4.
3. The Petition alleges claims of negligence against Dollar Tree Stores, Inc. (“Dollar Tree”) and D.H. Pace. *See generally* Plaintiff’s Petition, attached as Exhibit 3.
4. At present, there are no pending motions or discovery requests.

5. D.H. Pace filed its Answer on December 29, 2020. *See* Answer of D.H. Pace, attached as Exhibit 5 and Entries of Appearance as Exhibits 6 and 7.

**I. All Procedural Requirements for Removal Are Satisfied**

6. Under 28 U.S.C. §§ 166(c), 1446(a), the United States District Court for the Western District of Oklahoma is the appropriate court to remove a civil action from the District Court of Oklahoma County, Oklahoma.

7. The Petition alleges the subject incident occurred at a Dollar Tree store in Oklahoma County, Oklahoma. *See* Plaintiff's Petition, ¶ 7, attached as Exhibit 3.

8. The summons and petition were served on D.H. Pace on December 11, 2020. This Notice of Removal is filed within 30 days after D.H. Pace's receipt of "the initial pleading setting forth the claim for relief upon which such action or proceeding is based." Thus, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(1).

9. Pursuant to 28 U.S.C. § 1446(b)(2), D.H. Pace cannot confirm whether Dollar Tree contests proper service and Dollar Tree has not yet entered an appearance in the action.

10. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this notice of removal shall be given to the Plaintiff and shall be promptly filed with the clerk of the District Court of Oklahoma County, Oklahoma after the filing of this Notice of Removal.

**II. The Court Has Subject-Matter Jurisdiction of this Action**

11. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because this is a civil action where the amount in controversy exceeds \$75,000, and the Plaintiff and Defendants are citizens of different states.

12. It is apparent from the face of the Petition that Plaintiff seeks recovery of an amount in excess of \$75,000, exclusive of interest and costs. *See* Petition, attached as Exhibit 3, at p. 4, “Wherefore Paragraph” (seeking damages in excess of the amount required for diversity jurisdiction under 28 U.S.C. § 1332, \$75,000.00).

13. The assertions regarding damages in the Petition are sufficient to demonstrate that the amount in controversy requirement for diversity jurisdiction has been met. 28 U.S.C. § 1446(c)(2).

14. An individual’s citizenship is determined by their domicile, meaning the place where the individual resides with an intent to remain indefinitely. *See Middleton v. Stephenson*, 749 F.3d 1197, 1200 (10th Cir. 2014). While residence and citizenship are not equivalent, “the place of residence is *prima facie* the domicile.” *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

15. Plaintiff alleges he “is a resident of Oklahoma City, Oklahoma.” *See* Petition, attached as Exhibit 3, at ¶ 1.

16. A corporation is deemed a citizen of its state of incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1).

17. Dollar Tree is a corporation organized under the laws of the state of Virginia, with its principal place of business in the State of Virginia. Thus, it is a citizen of the State of Virginia for purposes of diversity jurisdiction. *See* Dollar Tree’s registration details with the Commonwealth of Virginia’s State Corporation Commission, attached as Exhibit 8.

18. D.H. Pace is a corporation organized under the laws of the state of Delaware, with its principal place of business in the State of Kansas. Thus, it is a citizen of the State of Delaware and Kansas for purposes of diversity jurisdiction.

19. Should the Court determine that this Notice of Removal is in some manner defective, D.H. Pace respectfully request that the Court allow them to amend or supplement, as necessary.

WHEREFORE, Defendant D.H. Pace Company, Inc. hereby removes this matter from the District Court of Oklahoma County, Oklahoma to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 and invokes this Court's jurisdiction.

Respectfully Submitted,

**JOHNSON & JONES, P.C.**

s/ Joshua D. Poovey  
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***Attorneys for Defendant***  
***D.H. Pace Company, Inc.***

**CERTIFICATE OF SERVICE**

This is to certify that on December 30, 2020, the undersigned caused a true and correct copy of the above and foregoing to be filed and served via the CM/ECF e-file system and/or e-mail upon the following:

Larry E. Finn  
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7 S. Mickey Mantle, Second Floor  
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*Attorney for Plaintiff*

s/ Joshua D. Poovey